

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DENNIS DONOVAN FOWLING,)	
)	
Petitioner,)	
)	
v.)	1:11CV1138
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a document entitled as “Defendant’s Motion for an Order of Civil Contempt.” In that document, Petitioner seeks to have the Attorney General of the United States of America or the Federal Bureau of Prisons (BOP) held in contempt because he is being housed, at the BOP’s direction, in a prison operated by a private corporation. Petitioner complains about the way that prison is run and seeks to be transferred to a prison run by the BOP itself and to have his sentence shortened because he has allegedly been subjected to harsher conditions than inmates housed in prisons operated by the BOP. Where a petitioner is attacking the execution and not imposition of a sentence, his petition is properly before the court pursuant to 28 U.S.C. § 2241. *See, e.g., Youngworth v. United States Parole Commission*, 728 F. Supp. 384, 388 (W.D.N.C. 1990). Because Petitioner is primarily challenging his housing assignment, i.e, the execution of his sentence,

his submission will be construed as a petition under § 2241.¹ Unfortunately for Petitioner, in a § 2241 action, the petition should be filed in the district court of the district where the petitioner is in custody. *Id.* (citing *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 495-500 (1973)). Accordingly, this petition cannot be further processed because it appears that Petitioner is incarcerated in the Eastern District of North Carolina. This particular petition should be dismissed, but without prejudice to Petitioner filing a new petition in the proper district. Petitioner should seek the proper forms from the Clerk of that district and file the petition there. The address for the Clerk is: 310 New Bern Avenue, Room 574, Raleigh, NC 27601.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation of dismissal with permission to file a new petition in the proper district.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE RECOMMENDED that this action be dismissed *sua sponte* without prejudice to Petitioner filing in the proper district.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: January 10, 2012

¹ If Petitioner instead wishes to challenge his prison conditions, he should also seek the forms for doing that from the district of his incarceration.